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Ein neues Japan?

Politischer und sozialer Wandel seit den 1990er Jahren



Peter Lang

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GOVERNMENT CHANGE, POLICY CHANGE? GENDER EQUALITY POLICIES IN JAPAN SINCE 2009

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Abstract

After the change of government in 2009, many expected the new DPJ-led government to implement changes in Japanese society and politics. In the area of gender equality policies, new policy-making and implementation dynamics were anticipated. This paper aims at exploring the extent of policy change in the field of gender equality policies since the new government took office in 2009 by focusing on two policies that stood out on the agenda: the compilation of the Third Basic Plan for Gender Equality and the amendment of the Civil Code. In both cases, the prospects for policy change seemed similar, because the governing party was supposed to take up a more progressive stance towards gender equality, timing was fortunate, and the ministers in charge as well as Prime Minister Hatoyama were supporting policy change in these areas. Furthermore, lobbyists from within Japan and the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) Committee called on the Japanese government for action. The policy outcomes, however, turned out to be very different: While the Third Basic Plan for Gender Equality includes prominent new policy measures and is an example of visible policy change, plans for amending the Civil Code failed. The article argues that these differences are best explained by intraparty divisions over gender equality within the ruling DPJ which emerged especially since the party took over government.

1 Introduction

After a landslide victory by the Democratic Party of Japan (DPJ, 民主党) in the Lower House elections at the end of August 2009, many voters and observers expected Japanese society and politics to change. The DPJ program featured slogans such as “putting people’s lives first” or “from concrete to people” and promised – among other things – to address social inequalities and people’s everyday problems (Arase, 2010; Harris, 2010; Osawa, 2011; Winkler, 2009). The election could be called one of alternative priorities – between corporate growth, a central issue for the Liberal Democratic Party (LDP, 自由民主党), and social equity, a central topic on the DPJ agenda (Arase, 2010: 53).

Change was also expected in the area of gender equality. People anticipated new dynamics in policymaking and implementation in this policy area, as a female DPJ politician explains (Interview former DPJ lawmaker, 03.08.2012):

Women have been waiting and hoping for decades for politics that do not focus on concrete, but on human beings [...]. Be it the nursery problem, be it the problem of housing the elderly – women were longing for politics that used money for *that* [...]. The DPJ then was different [from the LDP] and took a closer look at people's lives, it planned to spend more money on those soft issues and promised to implement such policies – I think women had great expectations.

Not only concerned voters, but also party members expected things to change. Especially those who had been supporting gender equality for a long time were convinced that the time for change had come: "I had big expectations. Because I had put so much energy into it," remembers Okazaki Tomiko (DPJ), former Minister of State for Gender Equality (Interview Okazaki, 08.08.2012).

Expectations had grown because, compared to the LDP, the DPJ's profile suggested a more progressive attitude towards issues related to gender equality. Focusing on people's lives in the election campaign – instead of economic growth – suggested closeness to the gender issue. Furthermore, as opposition party, the DPJ had supported bills to introduce the right to separate surnames for couples – an important issue for gender equality advocates. Besides, supporting female candidates for election resulted in forty female candidates being elected on the DPJ ticket in 2009, thereby increasing the ratio of women in the Lower House to 11.3 percent (Gauder, 2012: 441–442).

However, three years after the DPJ government came into office and after what many expected to be the beginning of considerable changes in governance and policies, the support rate for the DPJ government under Prime Minister Noda has dropped to 19 percent (YS, 05.11.2012), making a DPJ victory in the next Lower House elections unlikely. Be it policies addressing social inequalities, or other priority issues such as relocating U.S. Marine bases on Japanese territory, or redefining the balance of power between politicians and the bureaucracy – the DPJ seems to have been unable to implement most of these plans. While the change of government was "a politically transformative event," policy change remained minor and certainly not "similarly transformative" (Lipsy / Scheiner, 2012). Thus, the high expectations have been dashed, leading to low government support rates.

However, the development of overall support for the DPJ does not yet reveal anything about the DPJ government's performance in the area of gender

equality policies. Did the new government meet the expectations placed on it? Are substantial policy changes – or at least some new impulses in this policy field – visible since the DPJ took office? Did the government plan changes, but has simply not been able to implement them, or is gender equality only a marginal topic on the DPJ agenda? This paper aims at exploring the extent of policy change in the field of gender equality policies since the new government took office in 2009.

Changing gender equality policies under the DPJ government has not yet been extensively studied. Political scientist Alisa Gaunder (2012) sheds light on the role of female DPJ lawmakers by pointing out that the impact of the comparatively high number of female DPJ lawmakers in the Lower House since 2009 on policymaking has been marginal: The women are mostly inexperienced, hold only junior positions within the party, and their numbers are still too small to be critical. Assuming that female lawmakers are supporting gender equality issues, these findings suggest that, in this case, the higher ratio of female participation alone does not yet result in policy change for gender equality.

However, policy change related to gender equality might not only depend on the number of female Diet members. This paper will analyze two examples of gender equality policies on the DPJ agenda, and will take into account other variables that might have an impact on policy outcomes. After first explaining the theoretical framework, this paper will outline how gender equality policies in Japan have developed during the decades before the DPJ took over. Then the DPJ's official position on gender equality will be sketched out as a basis for the analysis of the new government's policy approach. The paper will focus on two cases of gender equality policies after 2009: the Third Basic Plan for Gender Equality of 2010, and the amendment of the Civil Code. Data for this study were collected through semi-structured interviews with DPJ and Social Democratic Party (SDP, 社民党) politicians and DPJ staff members as well as content analysis of DPJ materials, government documents, and media reports. Results of the author's dissertation on implementation processes of gender equality policies in Japan (Holdgrün, forthcoming) provide insights into the policy field of gender equality before the 2009 election.

2 Explaining Policy Change

Policy analysis examines “what governments do, why they do it, and what difference it makes” (Dye, 1976). Policy change within a policy field is one aspect of that. Policy change – be it new policies or modifications of present programs – do not happen in a vacuum, as there are previous ideas, policy programs and instruments as well as institutions and actors to engage with; or, in other words, a policy regime that tends “to dominate for extended periods of time, infusing a policy sector with both a consistent content and a set of typical policy processes or procedures” (Howlett / Ramesh / Perl, 2009: 200). Policymakers have to deal with such existing frameworks as it limits change or makes extensive change difficult. Howlett, Ramesh, and Perl (2009) identify different levels for change, calling them “normal” and “atypical” policy change. “Normal” policy change triggers only minor changes; new policies can replace old ones, but they still fit into the dominant policy regime. “Atypical” policy change evokes substantial policymaking changes and has an impact on ideas, institutions, interests, and processes. This kind of substantial policy change is far less common than incremental “normal” alterations, and it is much more difficult to be realized due to the existing policy regime. Howlett, Ramesh, and Perl (2009: 205) argue that atypical policy change occurs when actors with highly innovative potential, so-called “policy entrepreneurs” become active in situations that open up opportunities for a more substantial change because they are unexpected or cannot be explained sufficiently by the existing policy regime. Such situations could be exogenous to the policy process, such as, for example, crises triggered by disasters or elections; or endogenous, for example when a reframing of policies leads to alterations in decision making processes (Howlett / Ramesh / Perl, 2009: 205–206).

Furthermore, to explain policy change, it is important to study “ideas” and “energy” (Campbell, 1992: 26–51). “Ideas” are important for framing problems and developing solutions, and actors use “energy” when behaving in a certain way or another, thereby influencing decision-making processes – an aspect that is also related to interacting with other actors within institutional frames. For example, atypical policy change is more likely to take place in situations where innovative policy actors with strong stakes emerge and use “energy” to take part in the policy process or where new “ideas” are brought into the process. Thus, while the questions of what decisions are reached and how actors act are both important to understand policy change, they are not necessarily equally important. Campbell (1992: 26–28) points to four types of processes that explain

policy change, but although this paper will consider the visible impact of “ideas” and “energy” on policy change, it does not aim at identifying a certain type.

3 Gender Equality Policies before 2009

The questions of how the DPJ government approaches gender equality policies and whether changes can be identified can only be understood if we also consider briefly how programs in this policy field were put on the agenda, formulated, and implemented before the DPJ won the 2009 election.

Beginning in the mid-1970s, the Japanese government started to set up a new institutional framework and enacted several policies related to the status of women as international engagement through the United Nations and the World Women Conferences triggered worldwide changes and legal reforms for more equality since the International Year of the Women in 1975. The shift from women’s policies towards gender equality policies started with enacting the paradigm-changing Basic Law for a Gender-equal Society in 1999 (Mae, 2007; Osawa, 2002: 42–44). This law is the most far-reaching policy regarding gender-related issues in Japan to date, and it addresses all realms of society. Its core aim is to realize a Gender-equal Society “where both women and men shall be given equal opportunities to participate voluntarily in activities in all fields as equal partners in the society, and shall be able to enjoy political, economic, social and cultural benefits equally as well as to share responsibilities” (Article 2), and where “every citizen is able to fully exercise their individuality and abilities regardless of gender” (Preamble) (GEB, 1999). Next to defining the concept of a Gender-equal Society, the law constitutes five basic principles to be followed throughout implementation, such as respect for human rights, the elimination of non-gender-neutral social practices, equal participation in decision making processes, cooperation in family responsibilities and international cooperation (Articles 3–7). It also sets up an institutional framework with assignments and responsibilities for national, local and individual actors to help build a new, Gender-equal Society (GEB, 1999). The law was enacted under an LDP-led government. Thus, the last decade before the DPJ came to power is especially interesting for our analysis.

It took a special window of opportunity to get the Basic Law enacted under the LDP government. Pressure from inside and outside Japan contributed to that: actors in Japan, including women’s groups, had long been lobbying the govern-

ment for more gender equality while external pressure, for example from United Nations platforms, had also been a strong impetus for policy change. Especially since signing the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in 1979 and ratifying it in 1985, Japan found itself obliged to push forward with legislation for gender equality – the Basic Law was one result of this development. One important element that led to a friendlier atmosphere towards the issue of gender equality in Japan during the 1990s, though, was the attitude of the conservative government itself. The LDP had formed a coalition with the Social Democratic Party (SDP) and the New Party Sakigake in 1994. Both parties had female leaders, Doi Takako (SDP) and Dōmoto Akiko (New Party Sakigake), who were known for their commitment to gender issues. It seems that this constellation had some impact on the LDP in terms of issuing a comprehensive gender policy. Besides, gender equality was seen as one option to solve urgent problems in Japanese society, such as those related to demographic change (Osawa, 2005: 159–160; Tanaka / Hong, 2007). Against this backdrop, it is easier to understand that the Japanese Diet passed the Basic Law unanimously.

After implementing the Basic Law in 1999, far-reaching changes were expected to take place in Japanese society. However, there are only few clearly visible changes so that, in international comparison, Japan still lags behind in terms of gender equality, ranking 101 among 135 countries in the Global Gender Gap Report 2012 (WEF, 2012: 9). Thus, though formulating the Basic Law meant policy change, the outcome of one decade of implementation under LDP-led governments was not as promising as observers had hoped.

Ideological and structural barriers constrain the outcome of the implementation process. On the one hand, the window of opportunity with an LDP government that kept a more progressive attitude towards gender equality closed soon after the enactment of the Basic Law. A backlash against gender equality issues followed as conservative citizens' groups and lawmakers fought aggressively against the ideas behind the Basic Law (Holdgrün, 2009). From the other direction, feminist experts and activists have heavily criticized the wording of the final version of the Basic Law for being less sharp and clear than in the first drafts (Kobayashi, 2004: 170; Mae, 2007: 25). Besides, subsequent gender equality programs leave room for interpretation in decision-making. Implementation instruments are weak, focusing on information rather than regulation (Holdgrün, 2011: 87, forthcoming).

Thus, the legacy of the last decade of LDP-government gender equality policies until 2009 is a progressive law with strong goals but weak instruments

for implementation that left considerable room for elusion, misinterpretation, and even open resistance. As such, the Basic Law's policy outcome was still low in 2009.

4 The DPJ Government and Gender Equality Policies

This section will examine how the new DPJ government has addressed gender equality policies so far, and to what extent policy change has taken place. Before doing so, we will briefly look at the DPJ's official position towards gender equality.

The DPJ's 2009 Manifesto with its motto "Putting People's Lives first" (DPJ, 2009) does not refer directly to the topic of improving the status of gender equality. According to a DPJ staff member, one reason for this is that gender equality cannot be reached immediately (Interview DPJ staff member, 04.07.2012). Issues related to gender equality are rather addressed indirectly, for example through policy pledges about child allowances, supporting single parents, and improving work-life balance. Nonetheless, gender equality is an issue in the DPJ's 2009 Policy Index (Seisaku Index, 2009) and in a 2004 DPJ booklet which calls for new gender equality policies that respond to recent social change and support individual lifestyles regardless of gender or age (DPJ DKSI, 2004). Both documents explain the DPJ agenda on gender equality by focusing on topics such as the pension system, employment, the right to separate surnames for couples, and other policies. An earlier English version of the Policy Index explains (DPJ, 1998):

We strive to eradicate fixed gender roles, discrimination, and unequal treatment wherever it exists in society. We shall modify or devise family laws to accommodate diverse lifestyles [...]. These steps shall help us build a society in which men and women are equal participants.

These goals are consistent with the 1999 Basic Law. That gender equality is not a prominent policy issue mentioned directly in the 2009 Manifesto but rather indirectly through gender-related policy pledges might be explained as a sign that, ideologically, the DPJ has moved gradually towards the center and that it carefully selects the topics it places prominently on the agenda in order to attract a larger number of voters (Gauder, 2012). Yet, policies to support social security and equality are a core topic on the DPJ agenda aiming at "putting

people's lives first" and thus serve as an avenue to bring the gender equality issue into the debate. But, as the following sections show, the DPJ's gender equality policies are not limited to this indirect approach.

Regardless of the Manifesto, expectations for policy change regarding gender equality were high when the DPJ government assumed office. As the Basic Law calls for the promotion of gender equality in all realms of society, gender issues come on the agenda in many different policy fields. Since September 2009, two topics stood out due to their potential far-reaching impact in the case of their successful enactment and implementation. One is the compilation of the Third Basic Plan for Gender Equality, the other is the revision of the Civil Code. This article focuses on these two DPJ policy projects and considers content, policy outcomes, and reasons for the success or failure, respectively, of policy change in these areas.

4.1 The Third Basic Plan for Gender Equality

The Japanese government approved the Third Basic Plan for Gender Equality in December 2010. This plan followed the previous Basic Plans of 2000 and 2005. The 1999 Basic Law determines that the government has to compile national Basic Plans for Gender Equality. Their main purpose is to outline detailed short-term and long-term measures and conditions for the implementation of the Basic Law throughout Japan. The national Basic Plan also serves as a model for local plans that are set up by prefectures and municipalities in order to lay out local policies for gender equality (GEB, 1999). Therefore, the Basic Plans are at the center of the institutional framework for implementing the Basic Law. As such, it can be said that compiling and implementing the national Basic Plan is one of the most important tasks of the Japanese government in the course of implementing the Gender-equal Society (Holdgrün, 2011: 78–79). The Third Basic Plan lays out long-term policy measures until 2020 and concrete measures for the period until 2015.

4.1.1 Contents and Significance

The previous Second Basic Plan for Gender Equality which was issued in 2005 outlines measures to implement a Gender-equal Society as formally required by the Basic Law. However, the plan's wording leaves room for interpretation and the suggested policy instruments for implementation are soft: the Plan focuses more on the provision of information and regulative instruments are rare (DKSS,

2005) which might be the cause for unsuccessful outcomes. In comparison, the Third Basic Plan seems to be much more effective as it includes new features that stand out in two respects: New priority fields are included and policy measures are much more clearly regulated through the definition of benchmarks.

All Basic Plans are structured in a similar way by stating the “basic philosophy”, “basic policy directions and specific measures”, and by identifying priority fields. The Third Basic Plan includes five new, additional priority fields to respond to changing needs in society, making it 15 fields in total. Among the new priority fields are subjects such as “Gender equality for men and children” and “Support for men and women facing difficulties such as poverty” (GEB, 2011: 29; NDKSK, 2010: 1). The new emphasis on poverty clearly reflects the DPJ government’s efforts to address social inequality (Osawa, 2011: 4).

The second, more outstanding change introduced by the Third Basic Plan is that many “performance objectives”, i.e. benchmarks, are allocated to each of the 15 priority fields “in order to make it an effective action plan” (GEB, 2011: 29). Benchmarks are explained as “standards that the government as a whole aims to achieve by comprehensively implementing the specific measures stated for each of the priority fields” (GEB, 2011: 29). All benchmarks are numerical targets that are linked to deadlines for implementation. The system of benchmarks is not new, and we find them already in the Second Basic Plan (NDKSK, 2005). Yet, whereas the Second Basic Plan of 2005 listed 42 benchmarks, the new plan of 2010 almost doubled this number to set 82 targets.

While we find several benchmarks attached to each of the 15 priority fields in the Third Basic Plan, the highest number refers to the priority field of “Expansion of women’s participation in policy decision-making processes”. Female participation is a dominant issue in the Third Basic Plan. Another prominent feature is the goal to increase “the share of women in leadership positions to at least 30 percent by 2020 in all fields of society” and to support female employment in order to abolish the M-curve. Together with the introduction of new priority fields and the setting of clear benchmarks, these two topics form the four prominent features of the new Basic Plan (NDKSK, 2010). Okazaki Tomiko (Interview, 08.08.2012), Minister of State for Gender Equality at the time when the plan was approved, explains:

We have set detailed benchmarks. With this measure, we will control and improve the progress year by year, and we will question why there is no progress. In this point, the Third Basic Plan differs from previous ones. And the reason for that is that since the DPJ took over government, all women, all female Diet members in the House of Representatives and the House of Councilors, are spending lots of energy on this issue.

The Basic Plans are guidelines for the implementation of the 1999 Basic Law. As such, they first need to be executed before policy outcomes and effects could be evaluated. Many problems can evolve along with these processes (Holdgrün, forthcoming). Compared to the Second Basic Plan of 2005, however, the newly compiled Third Basic Plan features prominent new measures, and most outstandingly, it leaves much less space for interpretation or delay because of the extensive enlargement of the benchmark system which sets clear targets both in numbers and time.

If implementation and its progress are thoroughly supervised, this plan is a much more powerful program than its predecessor, especially when it comes to the priority field of female participation in decision-making processes. Raising the numerical targets clearly gives a new impulse to the implementation of a Gender-equal Society. Thus, the Third Basic Plan is an example of visible policy change in the field of gender equality since 2009.

4.1.2 Factors Supporting Policy Change

The reason that a new plan was compiled at all in 2010 is related neither to the change of government, nor to the emergence of new policy “ideas” or the “energy” of certain actors within the new government. Basic Plans are compiled in a routine rotation every five years, and the next plan was due in 2010, meaning that there would have been a new plan even without government change and without any new “ideas” or “energy”. Thus, the Third Basic Plan as such is not a sign of policy change itself, yet there is visible policy change, which is based on three factors.

First, the timing was fortunate. While drafting and compiling a new plan was a routine assignment regardless of the party in power, 2010 was the DPJ government’s first year in office. As such, this was a good opportunity to show its commitment to gender equality issues and to redirect gender-related policies according to the DPJ agenda. Although deliberations about the Third Basic Plan had already begun in March 2009, most of the work started only after the 2009 Lower House elections, thus ensuring that the plan was indeed a DPJ policy product (Osawa, 2011: 4).

Second, interview data show that “energy” invested by actors involved in the decision-making process proved important in terms of the Plan’s contents. First and foremost, the first Minister of State for Gender Equality of the new DPJ government, Fukushima Mizuho, played an important role in directing the new plan. A lawyer first elected to the House of Councilors on the SDP ticket in

1998 and head of the SDP since 2003, Fukushima has been speaking up for gender equality issues for a long time. Along with the People's New Party (PNP, *Kokumin Shintō*, 国民新党), the SDP was one of the coalition partners of the DPJ. Fukushima was minister from September 2009 until May 28, 2010, and during this time she was responsible for drafting the new plan. In an interview with the author, she explains (Interview Fukushima, 23.07.2012):

I was very lucky. When the government changed, I was supposed to work on this subject. And as I really wanted to do so, this was absolutely worth it [...]. The Second Basic Plan[']s [...] contents were not good at all because this took place during the time of gender bashing. They invested a lot of effort, but there was a backlash. This is the reason why, when I was minister, I wanted to make good contents for this Third Plan, a plan with effective force. I have negotiated a lot for this. And in this sense, it was good, I think [...]. The DPJ then had, in contrast to the LDP, a point of view to promote gender equality, and that was really good.

Even though Fukushima quit office because the DPJ–SDP coalition broke up in May 2010 before the final version of the plan was compiled, she was involved in the overall drafting (Interview Fukushima, 23.07.2012). Former minister Okazaki explains: “In my opinion, the influencing role of Ms. Fukushima was great. When compiling the Third Plan, she used her power as Minister of State, and this power was very strong” (Interview Okazaki, 08.08.2012). Another DPJ politician and advocate of gender equality agrees about Fukushima's expertise (Interview former DPJ lawmaker, 03.08.2012): “She has been doing this long before becoming a Diet member, and she understands this issue very well.” One of Fukushima's strategies was, for example, to stress measures that were not implemented (Interview Okazaki, 08.08.2012).

In total, four Ministers of State were in charge of gender equality issues until the Third Basic Plan was approved in December 2010. Among them, Fukushima was in office longer than her immediate successors and took responsibility for setting the direction of the draft. Her negotiations seem to have had a great impact on the content and phrasing of this policy program. Fukushima thus proved to be an actor that put a lot of “energy” into this issue, and she was able to do so because both the coalition partner DPJ and the administrative body in charge, the Gender Equality Bureau, were supportive (Interview Fukushima, 23.07.2012). Prime Minister Hatoyama Yukio was also said to support gender equality, and this might even have been a reason to appoint Fukushima Mizuho to be Minister of State for Gender Equality (Arase, 2010: 45; Brasor, 20.09.2009; Interview former DPJ lawmaker, 03.08.2012).

The third factor on which policy change was based is that the UN Committee on the Elimination of Discrimination Against Women (CEDAW) handed in its concluding observations on the status of gender equality in Japan in August 2009. This first comment on the state of gender equality in Japan since 2003 can be seen as an evaluation of LDP-government gender equality policies. CEDAW strongly recommended further improvement, pointing out that although Japan had enacted legislative regulations, overall progress since 2003 had been minimal and efforts insufficient. According to CEDAW, the outcome of half a decade of pursuing gender equality had been unsuccessful. Two issues are highlighted with special consideration: the improvement of female participation in decision-making processes (Art. 18) and the amendment of discriminatory elements in the Civil Code (Article 28). In order to achieve higher female participation in politics, work, public, and academia (CEDAW, 2009: 5), CEDAW recommended clear objectives combined with a schedule. The committee also required the Japanese government to act upon these two points of concern within two years, i.e. by August 2011 (CEDAW, 2009: 13).

These CEDAW recommendations were handed to the Japanese government just weeks before the electoral victory of the DPJ. As such, it became a starting point for the DPJ government in relation to gender equality policies. As Japan has signed and enacted the CEDAW, it is formally bound to act upon the Committee's recommendations. But the question is to what extent the international committee could influence the actions of the Japanese government. Assessments differ: Former minister Okazaki says that the former LDP government's reaction to previous recommendations used to be critical, but that the DPJ government is seriously endeavored to comply with the CEDAW's requests (Interview Okazaki, 08.08.2012): "It was different this time. This time, I was Minister of State and I worked closely with the Gender Equality Bureau. We lag behind. We have to do something. Thus, in my opinion, it came that we keep up pace since the Third Plan." Another DPJ lawmaker working intensively on gender equality issues thinks instead that the reaction of the DPJ government has been superficial and insufficient (Interview DPJ lawmaker, 09.08.2012).

With the CEDAW observations, an international UN committee exerted pressure, and the DPJ government was supposed to act. The routine renewal of the Basic Plan opened a window of opportunity to reshape national policies and guidelines towards gender equality according to the CEDAW requirements and to meet its' expectations. This paper will not retrace to what extent the CEDAW recommendations finally had an impact on the government's decisions. However, with the plan's new benchmarks focusing on the problem of female

participation, and with the way policy recommendations combine benchmarks with both a schedule to reach these targets and the policy tools to closely evaluate progress, the Third Basic Plan clearly responds to some of the urgent issues pointed out by the CEDAW.

To sum up, actors with a strong stake in gender equality, like Minister of State Fukushima Mizuho, made an effort to reach policy change in this case. Other factors contributing to this outcome were a supportive Prime Minister and close cooperation with administrative bodies, pressure from international actors, as well as the routine timing for the compilation of the new Basic Plan in the first year of DPJ rule.

4.2 *The Civil Code*

Supporters of gender equality had been striving to amend the Japanese Civil Code in order to abolish discriminatory elements related to gender since at least the mid-1990s (Osawa, 2011: 6) and even earlier (Brasor, 20.09.2009), but no steps were taken until a chance for reform seemed to open up with the rise of the new DPJ government in 2009.

4.2.1 Contents

Some contents of the Civil Code have long been criticized as discriminatory. One of the issues of concern for supporters of gender equality is to establish the right to have separate surnames for married partners (*fufu bessei*, 夫婦別姓). Another one is the differing minimum marriage age by law (*kon'in tekirei*, 婚姻適齢), which is 18 years for men and 16 years for women. Also criticized is the fact that – unlike men – women are not allowed to remarry in the first six months after divorce (*saikon kinshi kikan*, 再婚禁止期間). Moreover, the rules for children born out of wedlock regarding their registration in the family registry system and their inheritance rights are also regarded as discriminatory.

As an opposition party, since 1998, the DPJ initiated several bills to amend the Civil Code but these were unsuccessful due to opposition from the governing LDP (Brasor, 20.09.2009; Gaunder, 2012: 455; Interview former DPJ lawmaker, 03.08.2012). Against this backdrop, many voters and also DPJ members themselves expected the reform of the Civil Code to rank highly on the agenda and to be passed in the Diet with the new government. However, policy change in this area failed: the gender-related discriminatory articles in the Civil Code were not amended and the issue has been put on hold for now.

4.2.2 Prospects for Policy Change

In this case, policy change has not happened at all and the issues of concern have stayed unsolved. However, when the DPJ became the ruling party, it appeared that a window of opportunity had opened for reform. The prospects for policy change were based on three factors.

First, by having proposed bills on the issue before, the DPJ's image seemed to be open for reform. Prime Minister Hatoyama pointed directly to the need to address the surname problem through reform. As mentioned above, it was Hatoyama who had appointed Fukushima Mizuho as minister in charge of gender equality, knowing well that she had been fighting for the amendment of the Civil Code for a long time (Brasor, 20.09.2009; Munakata / Ichinose, 04.10.2010). However, the ministry responsible for drafting and introducing a new bill was not the minister in charge of gender equality, but the Ministry of Justice.

Second, another factor that could have led to policy change was that Chiba Keiko, the second female member of the Hatoyama Cabinet, was appointed Minister of Justice in September 2009. Like Fukushima, Chiba also had a strong stake in this reform (Munakata / Ichinose 04.10.2010). A DPJ politician and advocate of gender equality remembers (Interview former DPJ lawmaker, 03.08.2012): "I thought with her we could finally make it. I went to see Mrs. Chiba, and I told her: Let's absolutely, absolutely proceed with this draft while you are minister!" Meanwhile, women's movements also hoped for change (NJWA, 2011). For example, the citizen group M-Net – network for information about the amendment of the Civil Code (*M-netto – minpō kaisei jōhō nettowāku*) started to lobby the new government immediately after the election for the right to use separate surnames, pointing out: "The movement for reform has been stagnating for over 10 years. The DPJ is promoting the amendment of the Civil Code in its' Policy Index, and after the change of government now we can finally see the light" (YS, 22.09.2009). At the end of September 2009, Chiba announced the introduction of a bill to revise the Civil Code (Pulvers, 10.04.2009).

Third, the Civil Code reform issue was one of the two main points of concern in the CEDAW concluding observations of August 2009. Article 17 of the statement makes clear that the Committee was concerned about the still unchanged discriminatory legislation, and Article 18 "urges the State party to take immediate action to amend the Civil Code" (CEDAW, 2009: 3). The Japanese government was supposed to act upon Article 18 by 2011.

In fall 2009, the prospects for revising the Civil Code seemed to be quite similar to those surrounding the Third Basic Plan for Gender Equality, because (1) the DPJ was assumed to back civil code revisions based on previous party efforts, (2) the Prime Minister endorsed the matter in public, (3) the minister in charge was ambitious to put “energy” into it, and (4) actors within Japan and from the UN exerted pressure. However, differing from the Basic Plan renewal, policy change did not happen, making members of women’s movements say: “what the new government has done in the past two years betrayed the trust of women and people” (NJWA, 2011).

4.2.3 Factors Impeding Policy Change

This section will briefly explain the process that led to policy failure. Though Minister of Justice Chiba issued a draft to amend the Civil Code in January 2010, it was not approved by the cabinet and thus never reached the Diet. There are two main reasons: On the one hand, Kamei Shizuka, a conservative former LDP member and the leader of the coalition partner PNP, opposed the draft and refused to sign the cabinet decision. Apparently, the bill had been modified many times, but Kamei still refused to sign, obviously because he feared the loss of conservative votes (Interview Okazaki, 08.08.2012). Kamei even threatened to leave the coalition over this issue, an attitude that can be traced to the upcoming Upper House elections of 2010 (Munakata / Ichinose, 04.10.2010). On the other hand, groups within the DPJ were similarly concerned about conservative votes, and so the reform was even criticized among DPJ members (Interview DPJ staff member, 04.07.2012; Interview DPJ lawmaker, 09.08.2012; Munakata / Ichinose, 04.10.2010), arguing that children would not feel safe within their families if the surnames of mother and father were different (Interview Okazaki, 08.08.2012). Fukushima (Interview 23.07.2012) argues that DPJ leaders did not push hard enough for policy success. Another DPJ member thinks that the atmosphere was not favorable for reform because of the gender backlash, even though Chiba became Minister of Justice (Interview former DPJ lawmaker, 03.08.2012): “Just one single minister putting energy into that is not enough”.

Thus, supporters of the bill and opposing groups within the DPJ were deeply divided. This seems not to have been the case previously when the DPJ, as opposition party, had brought in bills on that issue – but being in opposition might have been the reason for submitting the bill, as failure was almost certain facing an LDP majority in the Diet. Besides, back then, the DPJ was just one of

the submitting opposition parties, alongside the SDP that had had a strong stake in that issue (Brasor, 20.09.2009). Now, it seems that amending the Civil Code has lost its place on the agenda (Interview DPJ staff member, 04.07.2012).

5 Possible Explanations for the Different Outcomes

To write the Third Basic Plan and to revise the Civil Code were two ambitious and significant projects for gender equality on the DPJ government agenda. As shown above, the conditions for success appeared similar at first sight: Time seemed to be right for action because the DPJ was supposed to take up a more progressive stance towards gender equality and because the party had previously supported the issue of amending the Civil Code. Both policies were meant to be implemented early in the first year of the DPJ governing. Ministers in charge were highly supportive and Prime Minister Hatoyama, too, seemed to agree on the matters. Lobbyists from within Japan and the CEDAW committee pressured for action. “Energy” provided by certain actors seemed to be decisive, as many of the “ideas” had already been prevalent. For example, target values such as in the Third Basic Plan had been inserted in a previous plan, though to a lesser extent and less precise level. The idea to introduce the right to separate surnames, among others, in an amendment of the Civil Code had also long been a subject of matter. Thus, a window of opportunity seemed to open up in both cases due to the change of government and because of the “energy” brought in by relevant actors.

However, despite similar preconditions, the outcome of both policy programs turned out to be very different. While the Basic Plan was enacted by cabinet decision and has been implemented throughout the country since December 2010, the topics related to gender equality in the Civil Code remain unchanged and the idea of revision has been put aside for now. In one case, some policy change took place; in the other case, no change took place at all. This section will focus on reasons to explain these differences in outcome despite similar preconditions.

The outlook for success was different for both policies due to the institutional framework. The new version of the Basic Plan for Gender Equality only needed approval by cabinet decision, Diet vote was not necessary as it was not a legal reform. Amending the Civil Code, however, would have required Diet approval and was therefore much harder to achieve. Thus, the formal require-

ments set for decision-making in each case provided an easier way for the Basic Plan – but, in the end, this proved not to be crucial as the Civil Code amendment was stopped already at the cabinet decision level.

However, the new contents discussed for inclusion into the Third Basic Plan and for the amendment of the Civil Code have a different range and should be considered with distinction. On the one hand, the new Basic Plan is outstanding because it puts “ideas” on a more substantial level by introducing clear target benchmarks to be met by a certain date, and because it does so on a broad scale. The target values make this policy program more concrete and are supposed to lead to a more effective implementation and successful policy outcome. On the other hand, these benchmarks are not compulsory. Though it is pointed out clearly in the Basic Plan that anyone involved in its implementation is supposed to cooperate and that the level of progress will be assessed and published, the schedule by which targets shall be reached could still be postponed, as one can see, for example, when comparing the Second and Third Basic Plans regarding objectives such as the ratio of positive action of companies (NDKSK, 2009: 175; 2012: 251). Regulatory penalty instruments for not reaching the target within the scheduled time are not clearly laid out. As such, the innovations in the Third Basic Plan are noticeable, but they remain permeable, and the mere statement of objectives does not necessarily lead to immediate changes in practice. Whether the selected instruments of implementation will lead to a successful policy outcome or whether there has been “no progress at all,” as female activists complain, (NJWA, 2011: 1) will be understood by closely observing the implementation process over time.

Compared to the Third Basic Plan, the contents to be revised in the Civil Code are much more contested. The problem as such is a different one because the issues in question address value change (Interview DPJ lawmaker, 09.08.2012) and are highly controversial – in the case of the right to have separate family names, to a nation-dividing extent. A legal reform would have brought immediate and visible changes; however, this went too far for the PNP and, crucially, for parts of the DPJ as well. The cabinet stayed divided over the issue.

Conservative attitudes within the DPJ proved to be stronger than progressive ones. Differing from policies to meet social inequalities, to relocate U.S. marine bases, or to redefine the power balance between politicians and the bureaucracy, the reasons for successful and unsuccessful policy outcomes in the cases of the Third Basic Plan and the Civil Code can be confined to actors within the government itself, as policy change or failure does not go back to budget

problems or negotiations with strong bureaucrats, opposition parties, and foreign governments. Cabinet decisions were decisive veto points in both cases. New features in the Third Basic Plan needed strong support, but most of them made their way to the final version. In the case of the Civil Code, however, no consensus was reached, and this DPJ policy has not been “internally consistent” (Krauss / Pekkanen, 2010: 14). The failure of gender equality policy outcome thus can be ascribed to DPJ characteristics, and especially to the impact of the various backgrounds of DPJ party members, as Carmen Schmidt (2011: 19) explains:

[...] policy diversification within the DPJ is wider than within other parties. This variation is due to the fact that the party was formed by a variety of existing political forces of diverse ideological background, which still seems to be of distinct importance for the diversity within the DPJ today. With regard to political issues, the analysis found evidence that the party is profoundly split over key policies such as the revision of the constitution.

Schmidt (2011: 19) also recognizes that politicians who are inclined more to leftist positions are losing influence within the DPJ, whereas members with more conservative attitudes and “very conservative members” (Krauss / Pekkanen, 2010: 14) gain influence. To such conservative politicians, as Brasor (20.09.2009) puts it: “allowing a woman to have a different name than her husband’s is the beginning of the end of the Japanese family.” Thus, the DPJ has no clear position on gender equality and is divided not only into supporters like Chiba Keiko and female junior lawmakers excluded from core decision-making processes versus stronger opposing conservative members (Gauder, 2012: 457–459), but also over subjects that let them approve the Third Basic Plan, but not the Civil Code amendment. In order to gain more votes, the DPJ gradually adopted a more conservative stance with direct impact on gender equality policies (Gauder, 2012: 460):

While its centrist position has enhanced its electoral performance, it has not allowed it to champion issues of concern to more progressive women, especially since gaining office [...] the DPJ has felt pressure to move to the middle to attract more votes. The DPJ’s abandonment of the dual surname issue is representative of this shift.

In sum, the prospect of a window of opportunity was not used equally for both policies. Institutional differences were not crucial for the decision-making process. In contrast with other policy plans, the reasons for failure in this case can be found within the government and traced back to the divided position on

gender equality within the DPJ itself. Against the backdrop of this fragmentation, policy success or failure depended on the impact anticipated for the discussed measures.

6 Conclusion

Gender equality policies have, at least in 2009 and 2010, not been marginalized on the new DPJ government's agenda. Compiling the Third Basic Plan and revising the Civil Code were two of the most significant projects on the gender equality agenda of the DPJ cabinet.

Both policies draw on several "ideas" that were discussed before. Within the policy regime, windows of opportunity with similar features seemed to have opened for both policies initially, but only in the case of the Third Basic Plan policy change proved successful. Amending the Civil Code failed – diverging from other unsuccessful policies on the DPJ government's agenda that depended on the budget situation or on negotiations with actors outside the government – mainly because of fragmentation within the DPJ itself. It became clear that members of the DPJ have very divided attitudes towards gender equality. Different from its time as opposition party, progressive gender equality policies are not supported any more by a considerable number of DPJ lawmakers in order to be attractive to conservative voters. Thus, in these cases, not "ideas" but the "energy" of supporting and opposing actors within the DPJ (and, to a certain extent, the coalition partner PNP) and connected to that the anticipated impact of the issues in public discussion have been pivotal factors for policy change in the field of gender equality policies since the DPJ government assumed office. Both supporters and opposing actors exerted "energy", but their impact in the decision making process and ability to bring together a majority were decisive: On the one hand, supportive DPJ lawmakers were outnumbered and without strong impact (Gauder, 2012). The advocacy of the minister in charge, on the other hand, proved not to be powerful enough in case of the Civil Code: to overcome resistance, a stronger entrepreneur such as for example the Prime Minister himself would have been needed.

Substantial policy change was not achieved by compiling the Third Basic Plan either. Amending the Civil Code successfully would also have been just "normal" change (Howlett / Ramesh / Pearl, 2009: 202–206), as both would have taken place within the existing policy regime for gender equality policies.

Nominally, the Basic Law has set up a new, broad framework for gender equality policies including even highly progressive ones. It could thus be argued that the Basic Law itself represents a more substantial policy change that was able to occur because innovative actors within and outside the government exerted an impressive amount of “energy” and brought in new “ideas” while a situation with both exogenous and endogenous pressure on decision-making processes related to gender equality policies opened up: Supporters of gender equality successfully reframed gender equality policies as solutions for the massive problems related to demographic change – a crisis that was not to be solved by pursuing the existing model of gender roles and that was not sufficiently explained by the existing policy regime. However, the policy change initialized by the Basic Law since 1999 has so far been impressive only on the level of policy formulation, as the outcome of implementation remained scarce for the first decade after enactment. Expectations for change were reignited when the DPJ government assumed office; however, with the Third Basic Plan, only one part of these anticipations has been fulfilled so far.

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